



February 3, 2007

PAGE ONE

Federal Prosecutors Widen Pursuit Of Death Penalty as States Ease Off

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February 3, 2007; Page A1

At a time when many states are backing away from capital punishment, the federal government is aggressively pursuing -- and winning -- more death sentences, including in jurisdictions that traditionally oppose them.

On Tuesday, federal prosecutors in New York persuaded a jury to give a death sentence to Ronell Wilson, a 24-year-old man convicted of killing two undercover detectives by shooting each in the back of the head. The decision -- the first time in more than 50 years that a federal jury in New York agreed to sentence someone to death -- marked something of a milestone for the Justice Department in its continuing effort to apply the death penalty more evenly across the country.

Today, there are 47 people on federal death row -- more than double the number six years ago -- and Mr. Wilson this week became the seventh sentenced in a state without a death statute of its own since the federal death penalty was reinstated in 1988. The ranks may grow in the months ahead, with several capital cases on tap in locales traditionally opposed to the death penalty.

The last federal execution was in 2003, when Louis Jones Jr. died by lethal injection at an Indiana facility where all federal executions now take place.

"I get the sense that it's really beginning to change a lot. There seems to be a renewed emphasis on this," said Jensen Barber, an attorney defending Larry Gooch, a man facing federal drug-related murder charges and a potential death sentence in Washington, D.C.

The growth in federal capital cases, many observers say, results from a heightened effort by the Justice Department to centralize the process for deciding whether prosecutors should push for capital punishment.

Justice Department spokesman Erik Ablin says the government is making an effort to pursue capital punishment uniformly across the country. "We have in place a clearly defined review process to ensure the death penalty is applied in a consistent and fair manner nationwide," he said.

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Congress in 1986 began expanding federal jurisdiction to crimes that traditionally had been prosecuted by states -- imposing mandatory minimum sentences in crack cocaine cases, for example -- and two years later expanded federal reach into capital cases. Still, it took 14 years before federal prosecutors under then-Attorney General John Ashcroft managed to obtain capital convictions in jurisdictions that didn't have the death penalty at the local level.

In many cases, the Justice Department has asserted jurisdiction even though local prosecutors were prepared to handle the cases. In Puerto Rico, for example, federal prosecutors have unsuccessfully sought death sentences for four defendants since 2003 although Puerto Rico's constitution explicitly states that "The death penalty shall not exist."

Puerto Rico's Secretary of Justice at the time, Anabelle Rodriguez, said her department's only recourse was to try to negotiate with the federal government to make it "respect local idiosyncrasy" so a death sentence wouldn't be enforced.

The rising count on federal death row comes as many states reconsider the death penalty or issue moratoriums on the punishment for a variety of reasons, including sloppy executions and exonerations of condemned inmates because of DNA evidence.

Since the 1988 reinstatement of the federal death penalty, prosecutors have attempted to bring capital cases in federal courts across the country. Typically, this has proved much easier in states such as Texas, which have death penalties of their own, than in states such as Iowa, which don't. In 2000, there were 18 inmates on federal death row, but none were from a state that disallows capital punishment.

Things began to change in 2002, when federal prosecutors secured a death sentence in Michigan, a state without a death penalty. A year later, Mr. Ashcroft ordered U.S. attorneys in New York and Connecticut to seek death penalties against 12 defendants even though prosecutors handling the cases had recommended against doing so or decided not to pursue capital charges. At the time, the Justice Department said there shouldn't be "one standard in Georgia and another in Vermont."

"There's all this talk about how death row is declining, but that's not true for the federal system," said Ruth Friedman, director of the Federal Capital Habeas Project, a federally funded program that assists lawyers in the post-conviction stage of capital cases.

Indeed, the rising count on federal death row in recent years has occurred while the number of inmates on state death rows has been falling. After a long rise, the number of people on state death rows has fallen to 3,344 last year from 3,593 in 2000, according to the Death Penalty Information Center, an organization that tracks capital cases.

Eric Holder, a former U.S. attorney in Washington who was deputy attorney general during the Clinton administration, said that in the 1990s, he and then-Attorney General Janet Reno weren't as likely to override a local federal prosecutor who didn't think a crime warranted capital punishment.

Overriding local federal prosecutors "was relatively rare during the Clinton years," Mr. Holder said. "Having both been local prosecutors, we really deferred to our U.S. attorneys' understanding that they knew their local situations."

The Justice Department declined to comment on this point.

Richard Dieter, executive director of the Death Penalty Information Center, said concerns that federal capital cases were being clustered in pro-death penalty states led the Justice Department under Mr. Ashcroft to intensify its push for death sentences in states that traditionally oppose the punishment.

This process is often difficult. In two recent cases in Washington, D.C, federal judges ruled out the possibility of death penalties. In New York, juries have opted for life sentences instead of executions in more than a dozen federal cases.

Mr. Gooch, the defendant in the drug-related murder case, was initially charged with two murders and slated for trial under D.C. law, which prohibits capital punishment. Later, the U.S. attorneys charged him with two additional killings connected with a drug ring -- making it a federal case and bringing the death penalty into play.

Mr. Barber, his lawyer, unsuccessfully challenged the move, citing a 1992 referendum undertaken at the behest of Congress in which D.C. voters overwhelmingly banned the use of capital punishment. Del. Eleanor Holmes Norton, the District's nonvoting congressional delegate, has written a letter to the U.S. attorney for D.C., objecting to the "new and troubling pattern" of federal capital cases in the district.

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